IN THE SUPREME COURT OF THE STATE OF DELAWARE

STACY GREEN,[1]	§	
	§	No. 258, 2010
Petitioner Below-Appellant,	§	
	§	
	§	Court Below—Family Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
DARREN GREEN, SR.,	§	File No. CN95-08787
	§	Petition No. 09-28151
Respondent Below-Appellee.	§	
	§	

Submitted: February 25, 2011
Decided: April 18, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

O R D E R

This 18th day of April 2011, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Stacy Green ("Mother"), filed this appeal from a Family Court order, dated April 5, 2010, denying her petition for modification of custody. Having reviewed the parties' respective contentions and the record below, we find no error in the Family Court's findings and conclusions. Accordingly, the Family Court's judgment shall be affirmed.

[1] The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

(2) The record reflects that the parties are the parents of a teenage son. Father was awarded sole custody of the child by Family Court order dated October 21, 2008. Mother was given weekly visitation. Mother filed a petition for modification of custody on August 25, 2009 and a petition for a rule to show cause on December 24, 2009. In her petition for modification of custody, Mother alleged that her son suffers from several medical conditions for which Father has failed to seek appropriate treatment. Mother's petition for a rule to show cause also alleged that Father was neglecting their son's medical needs. The Family Court consolidated the petitions and held a hearing on March 4, 2010. Both parties were represented by counsel, and both testified at the hearing. The Court also interviewed the parties' son. Thereafter, the Family Court denied both of Mother's petitions, finding that she had failed to carry her burden of proof. This appeal followed.

(3) Neither party is represented by counsel on appeal. Although it is not entirely clear, Mother appears to argue in her opening brief on appeal that the Family Court's factual findings are not supported by the record. Mother intersperses several documents throughout her opening brief reflecting missed medical appointments for her son, apparently in support of her argument that Father was neglecting his medical needs. Mother also

attaches copies of letters purportedly written by her son. One letter is dated September 9, 2009. The others are undated. None of the letters were marked for admission or otherwise allowed into evidence at the hearing.[2] Accordingly, we will not consider these letters on appeal.[3]

(4) In reviewing a motion for modification of custody that is filed within two years of the Family Court's most recent custody order, the Family Court "shall not modify its prior order unless it finds, after a hearing, that continuing enforcement of the prior order may endanger the child's physical health or significantly impair his or her emotional development."[4] In this case, the Family Court concluded that Mother had not sustained her burden of showing that the prior order granting sole custody of the child to Father endangered the child's physical health or threatened his emotional development. The Family Court found Father's testimony more credible regarding taking the child to necessary medical appointments. The Family Court also noted that it did not find Mother's testimony credible regarding

[2] When Mother's counsel began to examine Mother on the witness stand about statements made by the child, Father objected. The Family Court ruled that it would not allow admission of any out-of-court statements by the child into evidence at the hearing because Mother did not give reasonable notice of her intention to offer such statements into evidence. *See* 13 DEL. CODE ANN. tit. 13, § 724(d)(1) (2009). The Court indicated that it would interview the child in chambers instead. Mother's counsel did not pursue any further questioning about the child's out-of-court statements or seek to have such statements marked for admission.

[3] *See Delaware Elec. Co-op. v. Duphily*, 703 A.2d 1202, 1207 (Del. 1997) (holding that only materials admitted into evidence are part of the substantive record on appeal, and that materials and exhibits offered, but not admitted, into evidence may be a part of the record on appeal but only to determine their admissibility).

[4] 13 DEL. CODE ANN. § 729(c)(1) (2009).

the one specific incident she claimed reflected Father's physical or verbal abuse toward the child. The trial judge interviewed the child. The judge acknowledged the child's expressed desire to spend more time with Mother but found nothing in the child's interview to conclude that continuing enforcement of the prior custody order endangered the child's health or emotional development.

(5) Our standard of review of a decision of the Family Court extends to a review of the facts and law, as well as inferences and deductions made by the trial judge.[5] We have the duty to review the sufficiency of the evidence and to test the propriety of the findings.[6] Findings of fact will not be disturbed on appeal unless they are determined to be clearly erroneous.[7] We will not substitute our opinion for the inferences and deductions of the trial judge if those inferences are supported by the record.[8]

(6) In this case, the Family Court's factual findings are amply supported by the record, and we find no basis to disturb those findings on appeal. Moreover, the Family Court properly applied the law to the facts in concluding that Mother failed to sustain her burden of proving that continued enforcement of the prior order awarding sole custody of the child

[5] *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).
[6] *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).
[7] *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006).
[8] *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

to Father endangered the child's physical health or significantly threatened his emotional development.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice